

# **EXHIBIT A**

1 - PAUL A. MARCUS -

2 Northwestern's invested capital and its ability to  
3 finance itself.

4 Q. Did you have an understanding as to how  
5 that analysis and any resulting opinion would be  
6 relevant to any issue in this lawsuit?

7 A. Can you repeat the question, please?

8 MR. PIZZURRO: Can you read it back,  
9 please?

10 (The question requested was read back by  
11 the reporter.)

12 A. I'm not sure that I did.

13 Q. Did you ever reach such an  
14 understanding?

15 A. I think I have a general understanding.

16 Q. What is your understanding today as to  
17 how your analysis and opinions are relevant to the  
18 lawsuit?

19 A. Well, just to the extent that my  
20 analysis explains what would have happened had the  
21 true information been put into the marketplace, it  
22 would determine whether or not Northwestern could  
23 have performed a series of financing transactions  
24 that it ultimately had done with information that  
25 was incorrect in the marketplace.

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1 - PAUL A. MARCUS -

2 Q. Mr. Marcus, I think you said you were  
3 asked to assess certain misrepresentations and  
4 omissions in Northwestern's financial statements  
5 for the year 2002; is that correct?

6 MR. KAPLAN: Objection.

7 A. I don't believe I set a date. I believe  
8 my characterization was that I was asked to assess  
9 those misrepresentations and omissions and  
10 determine the impact that those would have had on  
11 the company's invested capital and its availability  
12 of financing.

13 Q. Who told you there were any omissions or  
14 misrepresentations in any of Northwestern's  
15 financial statements?

16 A. Through reviewing documents, there were  
17 restated financial statements which would have  
18 omissions. There was a Securities and Exchange  
19 Dissent Decree Order that I reviewed.

20 There were documents pertaining to an  
21 internal investigation that I reviewed, things of  
22 that nature.

23 Q. Do I take it, then, that you are  
24 offering no independent opinion of your own in this  
25 action as to whether or not there were any

14

1 - PAUL A. MARCUS -

2 misstatements or omissions in any of Northwestern's  
3 financial statements?

4 MR. KAPLAN: Objection to form.

5 A. I can tell you what my opinions are in  
6 the matter, which are that, you know, as it's  
7 clearly articulated in my report, that the  
8 October 8th equity financing would not have  
9 happened, that the transfer of assets -- that would  
10 have been impeded by the involved security holders  
11 and regulatory commission, that the transfer put  
12 the holders of the QUIPS, who were part of the  
13 Montana Power Company, at greater risk as being  
14 part of the Northwestern company, those would have  
15 been two of my opinions. The third being that  
16 Clark Fork did not have the wherewithal to pay the  
17 QUIPS back. Those are my three opinions.

18 Q. Let me direct your attention, please, to  
19 the penultimate paragraph on the first page of  
20 Exhibit 1.

21 Could you read that, please, into the  
22 record?

23 A. Which paragraph are you referring to?

24 Q. The second to the last paragraph, the  
25 last full paragraph, if you will, on Page 1.

15

1 - PAUL A. MARCUS -

2 A. The one beginning, "We will not be  
3 auditing"?

4 Q. Yes.

5 A. "We will not be auditing any financial  
6 statements or performing test procedures with  
7 respect to information in conjunction with this  
8 engagement. Our services are not designed nor  
9 should they be relied upon to disclose weaknesses  
10 in internal controls, financial statement errors,  
11 irregularities, illegal acts, or disclosure  
12 deficiencies."

13 Q. Mr. Marcus, let me ask you then, again:  
14 Do I take it you are not offering any independent  
15 opinion of your own in this action consistent with  
16 the representation in the engagement letter as to  
17 whether there were any omissions or misstatements  
18 in any financial statements of Northwestern?

19 MR. KAPLAN: Objection.

20 A. Consistent with this paragraph, I have  
21 not performed any attestation procedures that would  
22 specifically relate to auditing financial  
23 statements, if that answers your question.

24 Q. Would you agree that nothing in your  
25 opinion should be relied upon to disclose any

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1                   - PAUL A. MARCUS -  
2 disclosure deficiencies in any of Northwestern's  
3 financial statements?  
4           MR. KAPLAN: Objection.  
5       A. I disagree with that.  
6       Q. You disagree.  
7           In what way does your opinion disclose  
8 such disclosure deficiencies?  
9       A. As I mentioned earlier, my opinion is  
10 based on review of significant information which  
11 talks about the deficiencies within the financial  
12 statements, within the public disclosures that were  
13 made. And I gave you a list of sources that I -- I  
14 used in my -- developing my understanding of those  
15 deficiencies, so --  
16       MR. PIZZURRO: Mark this as 2.  
17       (Whereupon, Marcus Exhibit 2 was marked  
18 at this time.)  
19       Q. Mr. Marcus, you've just been handed a  
20 document marked as Exhibit 2.  
21           Do you recognize this as the second  
22 amend -- strike that.  
23           -- First Amended Complaint in this  
24 action?  
25       A. It looks familiar.

17

1                   - PAUL A. MARCUS -  
2 contained in this paragraph with anyone from Friel,  
3 Frank?  
4       A. Not to my recollection, no.  
5       Q. Did you ever discuss the allegations in  
6 this paragraph with anybody else at Huron?  
7       A. Not to my recollection, no.  
8       Q. Were you ever asked or did you ever  
9 understand that you were being asked to offer any  
10 opinions with respect to the allegations contained  
11 in Paragraph 51?  
12       MR. KAPLAN: Objection to the form.  
13       A. I was never asked to perform any form of  
14 insolvency analysis.  
15       MR. PIZZURRO: Mark this as Exhibit 3.  
16       (Whereupon, Marcus Exhibit 3 was marked  
17 at this time.)  
18       Q. Mr. Marcus, you've just been handed a  
19 document which is marked as Exhibit 3.  
20           Do you recognize this as your report  
21 submitted in connection with this matter?  
22       A. Generally I recognize it. And I'll  
23 assume all of the pages were appropriately copied,  
24 and it is my report, yes.  
25       Q. In connection with issuing this report,

19

1                   - PAUL A. MARCUS -  
2       Q. Did you review this document in  
3 connection with the opinion you gave in this  
4 matter?  
5       A. My recollection is, is that I read the  
6 document early in the process.  
7       Q. I'd like you to turn to Page 10 of the  
8 document. Look at Paragraph 51 if you would, sir.  
9           Paragraph 51 reads, "The Debtor was  
10 insolvent both immediately before and immediately  
11 after the acquisition of MPLLC and the assumption  
12 of related liabilities. The Debtor was engaged in  
13 a business with unreasonably small capitalization  
14 and incurred debts beyond its ability to pay both  
15 immediately before and immediately after the  
16 acquisition of MPLLC and the assumption of  
17 liabilities."  
18       Sir, do you understand that the Debtor  
19 in this paragraph is Northwestern Corporation?  
20       MR. KAPLAN: I think if we look -- if  
21 you look on the first page of the Complaint --  
22 actually, I'm sorry, Paragraph 1 on Page 2, there  
23 it's defined.  
24       A. Yes, I do.  
25       Q. Did you ever discuss the allegations

18

1                   - PAUL A. MARCUS -  
2 did you ever speak to Mr. Robert Berliner?  
3       A. I did not, no.  
4       Q. Did you ever review any opinions  
5 prepared by Mr. Berliner?  
6       A. I did.  
7       MR. PIZZURRO: Mark this as Exhibit 4.  
8       (Whereupon, Marcus Exhibit 4 was marked  
9 at this time.)  
10       MR. KAPLAN: Just so the record is  
11 clear, there was an errata sheet which was also  
12 circulated with respect to the report.  
13       MR. PIZZURRO: It should be attached as  
14 the last page; if you'd like us to do that.  
15       MR. KAPLAN: No, that's all right. I  
16 wanted to make sure the record is clear.  
17       Q. Mr. Marcus, do you recognize Exhibit 4?  
18 I'm sorry. Let me strike that.  
19           You have been handed a document which is  
20 marked as Exhibit 4.  
21           Does that document contain the opinions  
22 of Mr. Berliner to which you referred earlier?  
23       A. I believe it does.  
24       Q. Is there any other document prepared by  
25 or on behalf of Mr. Berliner that you reviewed in

20

1 - PAUL A. MARCUS -  
2 meeting whether your opinion would be affected if  
3 Mr. Berliner's opinion was no longer reliable?  
4 MR. KAPLAN: Objection.  
5 A. I don't recall that specific discussion.  
6 Q. Do you recall it generally?  
7 MR. KAPLAN: Objection.  
8 A. No.  
9 Q. Do you recall any discussion which in  
10 any way related to the impact of Mr. Berliner's  
11 deposition on your opinion or your deposition here  
12 today?  
13 MR. KAPLAN: Objection.  
14 A. Not that I recall, no.  
15 Q. Let me direct your attention, please, to  
16 Page 5 of Exhibit 3 of your report.  
17 A. Okay.  
18 Q. Specifically, under "Summary of  
19 Opinions," which then goes over to Page 7.  
20 Did you write that section, "Summary of  
21 Opinions," yourself?  
22 A. I did.  
23 Q. Was any draft of this section of your  
24 report edited by anyone other than yourself?  
25 A. I was the only person who edited the

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1 - PAUL A. MARCUS -  
2 A. I guess I can't answer that because if  
3 somebody were to ask me a question and phrase it a  
4 certain way and ask me for my opinion, I might  
5 offer that opinion. But I have written a report  
6 that summarizes the things that I've analyzed to  
7 date and opinions that I'm setting -- proactively  
8 setting forth. But were you to ask me my opinion  
9 today on something, if I could give it, I would  
10 give it.  
11 Q. Have you changed any of the opinions as  
12 they're set forth in Marcus Exhibit 3 as of today?  
13 A. I'm a bit confused by your question.  
14 Q. I want to know if your opinion as  
15 expressed in the report or any one of them has  
16 changed in any way since September 19th, the date  
17 of the report, until you're sitting here today?  
18 A. I understand now. No, they have not.  
19 Q. Mr. Marcus, you're a CPA, are you not?  
20 A. I'm not, no.  
21 Q. You are not a CPA?  
22 A. I'm not a CPA.  
23 Q. Do you consider yourself an expert on  
24 the Montana Public Service Commission?  
25 A. Can you be more specific what you mean

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1 - PAUL A. MARCUS -  
2 document. There were other people who saw the  
3 report.  
4 Q. Were there any people who offered you  
5 suggestions as to specific use of language in this  
6 section of your report?  
7 A. Not that I recall. The only suggestions  
8 I received, that I recollect were, I'll  
9 characterize them as grammatical and sometimes  
10 comments were people didn't understand things and I  
11 would try to rewrite them to make them more  
12 understandable to you, but not word choices, no.  
13 Q. Do you have any opinions in this lawsuit  
14 other than what is contained in your report?  
15 MR. KAPLAN: I'm going to object to the  
16 form.  
17 A. I'm not sure I could answer that sitting  
18 here. I've submitted a report with the opinions  
19 that I formed. If you were to ask me an opinion  
20 about something else, I might have an opinion about  
21 it. But I --  
22 Q. My question, sir, is whether as an  
23 expert you were offering any opinions which are in  
24 addition to or different from the opinions which  
25 are set forth in Marcus Exhibit 3 in this lawsuit?

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1 - PAUL A. MARCUS -  
2 by an expert on the Commission?  
3 Q. No. That's as specific as my question  
4 is. It's pretty specific.  
5 A. Let me try to answer it then. I can  
6 tell you that I have extensive experience working  
7 in financing utility companies and reviewing  
8 opinions of commissions throughout the country in  
9 many jurisdictions. I have experience in reviewing  
10 other people's interpretation and understanding of  
11 how those commissions function. And I would  
12 consider myself an expert in interpreting and  
13 understanding how commissions work, what positions  
14 they put forth, their interests, and the  
15 constituencies that they represent.  
16 Q. Do you have any experience in dealing  
17 with the Montana Public Service Commission?  
18 A. I don't recall.  
19 Q. Have you ever offered opinion testimony  
20 as an expert about any aspect of the Montana Public  
21 Service Commission?  
22 MR. KAPLAN: Objection to the form.  
23 A. I have not.  
24 Q. Have you ever testified as an expert  
25 before the Montana Public Service Commission?

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1 - PAUL A. MARCUS -  
 2 MR. KAPLAN: Objection.  
 3 A. My opinion is that if the information,  
 4 which I've articulated in the next 50 pages, was  
 5 put into the marketplace, that this equity offering  
 6 in this form would not have happened.  
 7 Q. Impossible; is that your opinion?  
 8 MR. KAPLAN: Objection to the form.  
 9 A. It's my belief, as stated in the report,  
 10 that if all the relevant information was released  
 11 to the marketplace, the \$87 million equity offering  
 12 in that form would not have happened in October of  
 13 2002.  
 14 Q. And that would be your opinion even  
 15 if -- strike that.  
 16 Would that be your opinion even if we  
 17 assume that there was no breach of any covenant on  
 18 the \$280 million CSFB revolver in 2002?  
 19 MR. KAPLAN: Objection.  
 20 A. Can you repeat the question, please? It  
 21 was a little confusing.  
 22 (The question requested was read back by  
 23 the reporter.)  
 24 A. I think, as I've already stated, my  
 25 opinion is based on the facts I've analyzed. It's

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1 - PAUL A. MARCUS -  
 2 correct?  
 3 MR. KAPLAN: Objection to the form.  
 4 A. The asset transfer is the transfer of  
 5 the assets and certain liabilities on November 15th  
 6 to Northwestern Corporation. It didn't include the  
 7 transfer of a particular asset, a dam that was left  
 8 out of it, but the majority of the assets and  
 9 liabilities.  
 10 Q. That's the asset transfer that you're  
 11 referring to in this sentence, correct? That's all  
 12 I want to establish.  
 13 A. That's correct.  
 14 Q. You say the asset transfer would have  
 15 been impeded.  
 16 What did you mean when you used the word  
 17 "impeded"?  
 18 A. That the significant negative  
 19 information would have caused both the security  
 20 holders and regulators to take on certain actions  
 21 that would have impeded that asset transfer.  
 22 Q. I know, sir, that's repeating what you  
 23 said.  
 24 I'm asking you: Why did you use the  
 25 word "impeded"?

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1 - PAUL A. MARCUS -  
 2 also my opinion or my belief at this point that if  
 3 the covenant breach did not occur, all it would  
 4 have done is postpone the inevitable anyways. And  
 5 yes, I believe even without that covenant breach  
 6 that the equity offering in that form would not  
 7 have happened.  
 8 Q. Would not have happened in October of  
 9 2002; is that correct?  
 10 A. That's my opinion, as of October of  
 11 2002.  
 12 Q. Okay. Your language goes on after you  
 13 say, "the equity offering would not have occurred,"  
 14 and you say, "and the asset transfer would have  
 15 been impeded by the attempts of security holders  
 16 and regulators to protect their respective  
 17 investments and constituents because," -- and there  
 18 are bullet points.  
 19 I want to stop there and I want to ask  
 20 you first of all, just so the record is clear, the  
 21 asset transfer to which you refer here is the  
 22 transfer of the utility assets from Northwestern  
 23 Energy LLC to Northwestern and the consequent  
 24 assumption of liabilities from Northwestern LLC by  
 25 Northwestern on November 15th, 2002; is that

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1 - PAUL A. MARCUS -  
 2 A. I'm not sure how I can answer you, why I  
 3 chose a word.  
 4 Q. I would think that would be something  
 5 you would be most readily able to answer.  
 6 A. It specifically describes what my belief  
 7 is, is that with the information, the security  
 8 holders and regulators would have attempted to  
 9 impede the transfer.  
 10 Q. Let me put it a different way, sir.  
 11 In the immediately preceding line in the  
 12 same sentence you used the words "would not have  
 13 occurred" when describing the effect of disclosures  
 14 on the ability of the company to do the equity  
 15 offering, but you use the word "impeded" when  
 16 you're talking about the asset transfer.  
 17 I have to assume that's a very conscious  
 18 difference in words. And I'm asking you what you  
 19 meant by "impeded."  
 20 MR. KAPLAN: Objection to the form.  
 21 A. There are a number of things that I  
 22 think would have happened, which would have  
 23 included things like lawsuits being instituted,  
 24 regulatory actions taking place, Trustees being  
 25 contacted to start lawsuits. So my belief is all

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1 - PAUL A. MARCUS -  
2 QUIPS holders had a right to any different  
3 treatment than what they ultimately received under  
4 the terms of their contract?  
5 MR. KAPLAN: Objection to the form.  
6 A. Are you asking me a legal conclusion --  
7 to come up with a legal conclusion?  
8 Q. You said their interests were adversely  
9 affected. I just want to have an understanding as  
10 to whether you're saying that's because their  
11 contract was violated or because of some structural  
12 reshuffling in the capital structure of  
13 Northwestern.  
14 MR. KAPLAN: Objection to the form.  
15 A. I'm not drawing any legal conclusions,  
16 if that answers your question.  
17 Q. Did you have or do you have any  
18 understanding as to whether the QUIPS holders had  
19 the ability to take any action that would have  
20 impeded the asset transfer, as you've stated in  
21 your opinion?  
22 A. Well, I know that they obviously have  
23 the right to file a lawsuit, which they've done. I  
24 know that they have the right to approach a  
25 Trustee, and I know that bondholders frequently do

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1 - PAUL A. MARCUS -  
2 right to contact a Trustee of the bonds, to see if  
3 anything could be done as a group. I know that  
4 everyone has the right to go talk to the  
5 commissions to try to persuade them that the asset  
6 transfer would be problematic.  
7 You've asked me for things they could  
8 do. Those are definitely things that they could  
9 do.  
10 Q. Did you review the opinion of Judge  
11 Case, which was issued in or about August of 2001,  
12 on motion to dismiss that was made in this action  
13 by Northwestern? Do you recall, sir?  
14 A. I don't recall seeing that.  
15 Q. Back in that same sentence when you say,  
16 "impeded by the attempts of security holders and  
17 regulators."  
18 Other than the Montana Public Service  
19 Commission, were there any other regulators that  
20 you were referring to?  
21 A. At one point I was thinking about some  
22 of the possible regulators within the state in  
23 terms of Attorney Generals, things of that nature  
24 but the majority of my focus was on the Montana  
25 Public Utility Commission.

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1 - PAUL A. MARCUS -  
2 that. So they complained to a Trustee that their  
3 -- a Trustee for fiduciary reasons has to protect  
4 their interests.  
5 I know that they can go to a utility  
6 commission and stir up the pot, so to speak. Those  
7 are things I know they can do, if that answers your  
8 question.  
9 Q. That's as a general matter, correct?  
10 MR. KAPLAN: Objection to the form.  
11 Q. I'm asking specifically about the QUIPS  
12 holders.  
13 A. I think I answered you what I think the  
14 QUIPS holders, off the top of my head, could do if  
15 they felt that their position was going to be  
16 endangered.  
17 Q. What's the basis for that prediction --  
18 that view?  
19 MR. KAPLAN: Objection to the form.  
20 A. Facts. Because they've actually filed a  
21 lawsuit, so they obviously -- anybody in this  
22 country has the right to do that.  
23 My experience is that bondholders don't  
24 sit idly by and watch their positions deteriorate  
25 without doing something. I know that they have the

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1 - PAUL A. MARCUS -  
2 Q. Was that because you had reviewed some  
3 of the statements that had been made by the  
4 Commissioners in connection with the approval of  
5 the \$390 million secured financing that was  
6 accomplished in January and February of 2003?  
7 MR. KAPLAN: Objection to the form.  
8 A. I'm not sure what you're asking me.  
9 Q. You say the majority of your focus was  
10 on the Montana Public Utility Commission. I think  
11 it's Public Service Commission, not the Public  
12 Utility Commission.  
13 At any rate, I'm asking if your focus  
14 was because you actually reviewed some statements  
15 made in proceedings involving the MPSC in  
16 connection with Northwestern?  
17 A. No. My focus was on the Commission  
18 because I have experience with utility companies  
19 and commissions and know what an integral role they  
20 play in all of these things. I did ask to look at  
21 any rulings they might have made, and I did look at  
22 that one as part of my analysis.  
23 Q. Okay. You know that the MPSC had  
24 already approved the acquisition of the Montana  
25 Power assets by Northwestern in early 2002,

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2 correct?

3 A. I'd have to go back to the specific  
4 order, but my general recollection is that they  
5 approved it, yes.

6 Q. You also knew that that approval covered  
7 whether or not Northwestern kept the assets in a  
8 wholly owned subsidiary or moved them to the parent  
9 company to operate as a division along with  
10 Northwestern's other utility assets; is that  
11 correct?

12 A. My recollection is that the approval was  
13 for either a separate subsidiary or as a division.

14 Q. Do you have any basis for understanding  
15 whether having given that approval, the MPSC had  
16 the authority or the ability to step in and impede,  
17 as you've put it, the asset transfer?

18 MR. KAPLAN: Objection to the form.

19 A. All I can tell you is that the  
20 commissions -- from my understanding of commissions  
21 in general, is that they have broad authority over  
22 the utilities in their states. And that to the  
23 extent that this information, which is material in  
24 which they commented on extensively after the fact,  
25 if that information had been in the public domain,

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1 - PAUL A. MARCUS -

2 that they would have done whatever they could have  
3 to protect their constituents. And to the extent  
4 that that meant taking action, I believe that they  
5 would have done that.

6 Q. My question wasn't whether they wanted  
7 to do or not wanted to do.

8 My question is: Do you know what they  
9 had the authority to do, yes or no?

10 A. I haven't made a legal determination of  
11 what their authority is.

12 Q. You don't know, do you?

13 MR. KAPLAN: Objection. Asked and  
14 answered.

15 Q. Withdrawn.

16 Do you know whether the Montana Public  
17 Service Commission in its history has ever  
18 rescinded approval of a transaction once that  
19 approval had already been given? Ever?

20 A. That's a bit of a loaded question in  
21 that if you're asking me for a good transaction,  
22 did they rescind it? I don't know.

23 I don't know if there have been any  
24 transactions where material information was omitted  
25 or misrepresented and they were then put in a

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2 position of having to change their opinions. So I  
3 guess it's not really a fair apples to apples  
4 comparison.

5 Q. Fair enough.

6 When did the MPSC approve the  
7 transaction, including the assets held at the  
8 parent company?

9 MR. KAPLAN: Objection.

10 A. When you say the "transaction" --

11 Q. When did the MPSC approve Northwestern's  
12 acquisition of Montana Power assets and  
13 Northwestern's ability to hold those assets at the  
14 parent company level?

15 A. I don't recall the specific date.

16 Q. Would it refresh your recollection if I  
17 told you that it was in January of 2002?

18 A. Yes. That would be my understanding of  
19 approximately when that happened.

20 Q. So you're not suggesting in any way that  
21 any of the financial information upon which the  
22 MPSC based that decision was false and misleading  
23 are you?

24 MR. KAPLAN: Objection to the form.

25 A. I haven't analyzed what information was

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1 - PAUL A. MARCUS -

2 available at the time or what was or was not false  
3 and misleading. Obviously, there were  
4 representations made about what the future held,  
5 and I haven't assessed whether or not those were  
6 misrepresented or not.

7 Q. I want to understand, Mr. Marcus, other  
8 than your experience in dealing with utility  
9 commissions, and having read the opinion of the  
10 MPSC in connection with the approval of the  
11 \$390 million secured financing in '03, is there  
12 anything else that you base your opinion on that  
13 the MPSC would have acted to impede the going flat  
14 transaction?

15 MR. KAPLAN: Objection to the form.

16 A. Based on my belief that the financial  
17 information that would have come out would have  
18 been so bad and would have endangered the company  
19 so much that it's just common sense that they would  
20 do whatever they could to protect their  
21 constituents.

22 Q. What could they do to protect their  
23 constituents in those circumstances?

24 A. They could stop the assets from being  
25 transferred. They could restrict salaries. They

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1 - PAUL A. MARCUS -  
 2 could do all kinds of things, which, ultimately,  
 3 they did. They have fairly broad powers, based on  
 4 my understanding.  
 5 Q. Well, let's back up a second. We've  
 6 established you don't know whether they had the  
 7 authority to stop the transaction.  
 8 MR. KAPLAN: Objection to the form.  
 9 Q. We've established the facts --  
 10 established they never did. So, doing all kinds of  
 11 things they ultimately did, what did the MPSC  
 12 ultimately do to protect the interests of its  
 13 constituents in connection with the \$390 million  
 14 secured financing that Northwestern applied for in  
 15 early 2003?  
 16 MR. KAPLAN: Objection to the form.  
 17 A. You made two statements which I don't  
 18 think were questions and then asked me a question,  
 19 which I'm not sure was related to the statements.  
 20 If you'd be willing to break that down into some  
 21 smaller parts, it probably would be easier to  
 22 answer.  
 23 Q. I'm going ask my question, and you're  
 24 quite correct -- ignoring the statements I made.  
 25 My question is: What did the MPSC do to

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1 - PAUL A. MARCUS -  
 2 And all it did was postpone their  
 3 ultimate bankruptcy filing until September of that  
 4 year from the date in February. So I think they  
 5 were limited because those assets were already  
 6 gone.  
 7 Q. You say the assets were already gone.  
 8 Where did the assets go? Had they left  
 9 the State of Montana?  
 10 MR. KAPLAN: Objection. Argumentative.  
 11 Q. I want to know what -- the assets had  
 12 already gone. I want to understand.  
 13 A. Sure. There was a legal entity that  
 14 held the assets that had -- there was a legal  
 15 corporate structure that had security holders in  
 16 the form of debt, had preferred stock. And those  
 17 assets became incorporated with another company  
 18 called Northwestern Corporation.  
 19 So they were no longer available  
 20 exclusively for the benefit of those existing  
 21 security holders at the time. They became  
 22 incorporated into -- into Northwestern, and  
 23 therefore, many of the risks of Northwestern were  
 24 then spread over all of the "assets."  
 25 Physically, the transmission lines were

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1 - PAUL A. MARCUS -  
 2 protect the interests of its constituencies when it  
 3 approved the \$390 million secured financing that  
 4 Northwestern applied for in January of 2003?  
 5 A. Sure. Well, again, with a gun pointed  
 6 at their head, because the assets had already been  
 7 gone, there was limited things at that point that  
 8 the Commission could do.  
 9 But they did, in their Order, talk  
 10 about, I believe, salaries being cut back, limiting  
 11 the investment to the unregulated subsidiaries.  
 12 Those are two that come to mind quickly.  
 13 I'd have to think a little bit more about any  
 14 others.  
 15 Q. Why were there limited things at that  
 16 point, as you say? Why were there limited things  
 17 that the Commission could do in January of '03?  
 18 MR. KAPLAN: Objection. Asked and  
 19 answered.  
 20 A. Because the assets were already gone.  
 21 They were making a decision to help finance a  
 22 company that was on its last leg in terms of  
 23 approaching bankruptcy. And the decision at that  
 24 point was do what you can to get the 390 out so  
 25 that maybe they survive.

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1 - PAUL A. MARCUS -  
 2 still in the state. You're correct about that.  
 3 Q. Are you -- strike that.  
 4 The QUIPS holders were not a  
 5 constituency of the MPSC, correct?  
 6 MR. KAPLAN: Objection to the form.  
 7 Are you asking him who the QUIPS  
 8 holders are or where they live? I'm trying to  
 9 understand the question.  
 10 Q. Do you understand my question?  
 11 A. I don't.  
 12 Q. We're talking about the constituency of  
 13 the MPSC, the interests the MPSC has to protect.  
 14 Let's put it that way.  
 15 Do those interests include the QUIPS  
 16 holders?  
 17 MR. KAPLAN: Objection to the form.  
 18 A. The MPSC has to evaluate numerous  
 19 things, one of which is the financeability of the  
 20 utilities. And in protecting its constituencies,  
 21 it has to take into account interests and needs of  
 22 different financing mechanisms and investors. And  
 23 I think they would be concerned about what happened  
 24 to the QUIPS, as well, and other investors of the  
 25 firm.

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1 - PAUL A. MARCUS -  
2 Q. Well, why didn't the MPSC just say,  
3 "Give the assets back to your subsidiary  
4 Northwestern Energy LLC"?  
5 MR. KAPLAN: Objection.  
6 A. At that point, I don't know if they had  
7 the legal ability to do that. I just don't know  
8 the answer to your question.  
9 Q. You also don't know whether they had the  
10 legal ability to impede the going flat transaction  
11 having given their approval to the transaction in  
12 January of '02, correct?  
13 MR. KAPLAN: Objection.  
14 Q. I'm just trying to probe the limits of  
15 what your knowledge is concerning the scope of  
16 authority and ability of the MPSC to act. You  
17 offer an opinion they would have impeded.  
18 A. That's correct.  
19 Q. You don't know whether they could have  
20 ordered the assets given back.  
21 That's your testimony, correct?  
22 A. My testimony is I don't know the legal  
23 steps that they can take. I can tell you that my  
24 experience has seen a variety of different measures  
25 that utility commissions have taken to protect the

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1 - PAUL A. MARCUS -  
2 omissions I would include the restated financial  
3 information. I would include additional  
4 information relating to the performance of the  
5 unregulated subsidiaries, including their future  
6 potential.  
7 I would include that an impairment  
8 occurred prior to the time in the financial  
9 statements but it isn't specifically tied to  
10 Mr. Berliner's opinion in any way.  
11 Q. Sir, do you have an opinion as to  
12 whether Northwestern should have recognized a  
13 goodwill impairment with respect to Blue Dot and  
14 Expanets prior to December 31, 2002, independent of  
15 Mr. Berliner's analysis?  
16 A. My opinion would include the belief that  
17 the company was impaired in -- prior to that time  
18 period. I'm not opining on when exactly for GAAP  
19 reporting purposes an impairment charge needed to  
20 be taken.  
21 Q. Do you understand that Mr. Berliner is  
22 offering an opinion for GAAP reporting purposes as  
23 to when an impairment charge should have been taken  
24 by Northwestern in 2002?  
25 A. That is my understanding.

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1 - PAUL A. MARCUS -  
2 utilities, whether it was because of a large asset  
3 write-off in a nuclear power plant or variety of  
4 other situations.  
5 And they take a number of different  
6 actions. I cannot give you a legal conclusion as  
7 to what the Commission would do.  
8 MR. PIZZURRO: Let's take a 10-minute  
9 break.  
10 (Whereupon, there was a brief recess in  
11 the proceedings.)  
12 Q. Mr. Marcus, let me just direct your  
13 attention for a moment back to the very beginning  
14 of Paragraph 13 on Page 5 (I).  
15 You say -- you refer to the  
16 misstatements and omissions in Northwestern's  
17 financial statements.  
18 Do you see that, sir?  
19 Are you referring there to simply what  
20 was corrected in the restatement of the first three  
21 quarter Qs in April of '03, or are you including  
22 there the impairment analysis which Mr. Berliner  
23 performed?  
24 MR. KAPLAN: Objection to the form.  
25 A. Included in those statements and

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1 - PAUL A. MARCUS -  
2 Q. Is Mr. Berliner's opinion in that  
3 respect something upon which you have relied in  
4 offering your Opinion Number 1?  
5 A. It is a fact that I used in my analysis  
6 of coming up with my opinions.  
7 Q. To be clear, do you have any basis --  
8 let's strike that.  
9 Let me direct you to the bullet points  
10 which appear on Page 6. There's seven bullet  
11 points where you enumerate some of the -- what you  
12 have offered as the consequences that would have  
13 occurred had Northwestern been accurately reporting  
14 its financial condition.  
15 Do you see that?  
16 MR. KAPLAN: Objection.  
17 A. I believe the bullet points reflect some  
18 of the reasons that I believe that -- or support my  
19 opinion that the equity offering would not have  
20 occurred on October 8th and that the asset transfer  
21 would have been impeded.  
22 Q. I direct your attention to the fourth  
23 bullet point, which reads, "Northwestern would have  
24 defaulted on financial covenants related to its  
25 \$200 million," -- "\$280 million facility for which

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1 - PAUL A. MARCUS -  
2 Credit Suisse First Boston, CSFB, was the  
3 administrative agent."  
4 Do you see that, sir?  
5 A. I do see that, yes.  
6 Q. Do you have an opinion that this would  
7 have occurred, which is independent of the analysis  
8 and opinions offered by Mr. Berliner?  
9 A. I haven't fully analyzed whether or not  
10 there would have been a covenant default, as I  
11 mentioned to you earlier. I did not have  
12 sufficient information to complete that analysis.  
13 I could if I were asked to.  
14 Q. Sir, is the answer no? You have no  
15 opinion independent of Mr. Berliner as to whether  
16 there would have been a default on financial  
17 covenants; is that your testimony?  
18 MR. KAPLAN: Objection.  
19 A. My testimony is that I used this piece  
20 of information from Mr. Berliner because I did not  
21 independently calculate the numbers myself. Were I  
22 to calculate the numbers myself, I might come up  
23 with the same opinion. I just haven't done that.  
24 Q. You testified this morning you didn't do  
25 that because you didn't feel you had sufficient

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1 - PAUL A. MARCUS -  
2 Were you ever asked to offer an opinion  
3 independently as to whether or not goodwill  
4 impairment should have been recognized earlier in  
5 2002 resulting in a covenant breach under the  
6 revolver?  
7 MR. KAPLAN: Objection to the form.  
8 A. I'm a little bit confused. I was  
9 asked -- and we went through this at great length  
10 this morning.  
11 I was asked to assess and analyze  
12 misrepresentations and omissions, and I did that.  
13 And I was never asked to come up with an opinion.  
14 I was never asked to discuss anything in  
15 particular. I came up with my own opinions based  
16 on the information I reviewed.  
17 Q. I direct your attention to the fifth  
18 bullet point, which is the one directly below the  
19 one we just discussed. It reads, "CSFB would  
20 likely not have funded the \$280 million facility."  
21 Do you see that, sir? Is that  
22 conclusion a consequence of the immediately  
23 preceding bullet point?  
24 MR. KAPLAN: Objection to the form.  
25 A. The immediately preceding bullet point

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1 - PAUL A. MARCUS -  
2 information.  
3 Do you recall that testimony?  
4 A. I do.  
5 Q. What additional information would you  
6 need that Mr. Berliner had that you did not which  
7 would allow you to have done what he did?  
8 MR. KAPLAN: Objection to the form.  
9 A. I don't know what information he had.  
10 All of the information he had, I didn't see all of  
11 it. I know there's a list, but I don't know what's  
12 included in it. So you're asking me to determine  
13 what he has that I don't know he has that might go  
14 into my analysis.  
15 Q. You're right, and I'll ask a better  
16 question.  
17 What information do you need -- would  
18 you need to do the calculation you didn't do to  
19 determine whether there was a covenant breach?  
20 MR. KAPLAN: Objection to the form.  
21 A. I'd have to go back and revisit what it  
22 was we were missing in the first place. I just  
23 don't recall specifically.  
24 Q. Were you asked to calculate -- strike  
25 that.

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1 - PAUL A. MARCUS -  
2 was the impetus for saying this, although there  
3 could possibly be other reasons why it would not  
4 have funded. I didn't investigate those.  
5 Q. So in your opinion, the only basis that  
6 you have for predicting that CSFB would likely not  
7 have funded the \$280 million facility is  
8 Mr. Berliner's conclusion that there was a covenant  
9 breach; is that correct?  
10 MR. KAPLAN: Objection to the form.  
11 A. You're using the word "predicted" again.  
12 I guess we don't -- I don't know what that means.  
13 But what I've said here is if they were  
14 in default, that it's likely that they would not  
15 have funded given all of the other things going on  
16 regarding the company and the market at that point  
17 in time. The bank group would have likely not  
18 funded to protect its cash.  
19 Q. Well, assume with me for a moment that  
20 there was no known covenant breach in 2002, but  
21 that all the other restated financial information  
22 was in the marketplace.  
23 Do you have an opinion under those set  
24 of assumptions as to whether or not CSFB would have  
25 funded the \$280 million facility?

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1 - PAUL A. MARCUS -

2 MR. KAPLAN: Objection to the form.

3 A. I haven't come to a conclusion one way  
4 or another at this point as to whether or not  
5 that's true. I'm telling you the statements here  
6 are based on the work I've done to date.

7 Q. Sir, in the paragraph immediately after  
8 the last bullet point, the one that starts, "In  
9 each case above."

10 Do you see that, sir?

11 A. I do.

12 Q. The last sentence of that paragraph  
13 says, "In reality, this scheme to withhold  
14 information allowed the company to execute the  
15 above-mentioned transactions."

16 What is the scheme to which you were  
17 referring in that sentence?

18 A. Generally, it was the withholding of  
19 information about the severity of the problems at  
20 the unregulated subsidiaries, the lack of ability  
21 to ever get a return on those investments, the cash  
22 that was being put into those companies, the  
23 internal EXPERT system not performing at all -- the  
24 billing system not working at all. There might be  
25 some others, but generally that's what that's

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1 - PAUL A. MARCUS -

2 of a particular fact that isn't articulated in the  
3 report. If I included the -- everything in the  
4 report, the report would have been hundreds and  
5 hundreds of pages.

6 Q. Perhaps you could give us one example of  
7 something which you could have opined on but did  
8 not in the report that would be relevant to the  
9 case.

10 MR. KAPLAN: Objection to the form.

11 A. I think your characterization of opined  
12 is different. And the question I'm answering is:  
13 Are there other pieces of information that are not  
14 reflected in this report that could have influenced  
15 or have an effect on my opinion?

16 And the answer to that is the -- there  
17 could possibly be. I don't know for sure.

18 Q. That's fine. That was not my question,  
19 sir.

20 A. I'm sorry. I misunderstood it.

21 Q. My question was: Is there any other  
22 aspect or objective of the scheme to which you were  
23 referring in the sentence we're discussing which,  
24 as far as your opinion goes, do you have an opinion  
25 as to whether there's anything else that you

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1 - PAUL A. MARCUS -

2 referring to.

3 Q. Was there any other aspect or objective  
4 of the scheme to which you are referring as far as  
5 your opinion goes in the last sentence?

6 MR. KAPLAN: Objection to the form.

7 A. Well, again, all throughout my report --  
8 we can go page by page. You're asking me a general  
9 recollection as I'm sitting here. You could add in  
10 the ability to monetize certain assets. Again,  
11 there are others and they're pretty  
12 well-articulated in the report.

13 I guess if you want to go page by page  
14 through it or ask me the question specifically, I'd  
15 be happy to answer it.

16 Q. If there were any other aspect or  
17 objective of the scheme, it would be contained  
18 within the four corners of the document which has  
19 been marked as Marcus 4?

20 MR. KAPLAN: Objection to the form.

21 A. That isn't necessarily true.

22 Q. Where else would one find it?

23 A. There are hundreds of pages of  
24 documentation that I reviewed that I considered  
25 that could possibly factor into my interpretation

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1 - PAUL A. MARCUS -

2 described that's not here in the report?

3 MR. KAPLAN: Objection to the form.

4 A. Again, I'm not sure I fully understand  
5 so let me try it again.

6 When -- the beginning of your question  
7 isn't talking about new opinions. I think the  
8 beginning of your question is asking me whether or  
9 not I have other pieces of information that are not  
10 articulated in this report that could contribute to  
11 my opinions.

12 My opinions are stated pretty clearly in  
13 this report. I reviewed thousands of pages of  
14 documents, and there could be other things in some  
15 of those documents that support the scheme or  
16 support the materials that were omitted that didn't  
17 make it into the text of this report.

18 Q. I think that's good. Thank you.

19 Focusing again on the seven bullet  
20 points that you have on Page 6.

21 Is any one of these bullet points  
22 essential to your opinion that the equity offering  
23 would not have occurred and the asset transfer  
24 would have been impeded?

25 MR. KAPLAN: Objection to the form.

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1 - PAUL A. MARCUS -

2 A. As I said, because I knew that he was  
3 calculating those things, I didn't continue to  
4 pursue an independent calculation. There are also  
5 other reasons that I haven't fully analyzed the  
6 \$280 million revolving credit facility.

7 But already there are other reasons why  
8 a bank group might not fund a loan, and those could  
9 be with the legal right to not fund it or without  
10 the legal right not to fund it because a bank group  
11 that believes a company is on the doorstep of  
12 bankruptcy, whether or not it has the legal right,  
13 might take the chance that they shouldn't fund and  
14 keep the money and turn the -- enter the  
15 litigation. So I haven't analyzed those but that's  
16 a possibility that would have caused the credit  
17 facility not to fund as well.

18 Q. There's a lot of things that could  
19 happen, right?

20 MR. KAPLAN: Objection to form.

21 Q. CSFB could have lost a ton of money in  
22 other investments and not had the money to fund,  
23 right?

24 MR. KAPLAN: Objection to the form.  
25 Argumentative.

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1 - PAUL A. MARCUS -

2 And I haven't articulated that in the report, but I  
3 can tell you that is definitely something that  
4 happens in practice.

5 Q. Mr. Berliner -- Marcus, I apologize.  
6 Mr. Marcus, are you familiar with the turnaround  
7 program that was instituted by Northwestern in  
8 announcement dated February 19th, 2003, to address  
9 the worsening financial condition of the company at  
10 that time?

11 A. I do recall reading things about the  
12 turnaround plan, yes.

13 Q. Am I correct that your analysis of the  
14 effects on Northwestern, based on the assumption  
15 that accurate financial information was being  
16 reported to the marketplace, does not include any  
17 assumption that Northwestern would have reacted any  
18 differently than it did in 2002?

19 In other words, you have not assumed the  
20 company would have taken any steps to address a  
21 continually worsening financial condition as it  
22 actually did in February of '03; is that correct?

23 MR. KAPLAN: Objection to the form.

24 A. That's not correct, no.

25 Q. What did you take into account in your

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1 - PAUL A. MARCUS -

2 MR. PIZZURRO: Withdrawn.

3 Q. What is there in any work that you've  
4 done, other than speculation in which you just  
5 engaged, that would support what is contained  
6 Paragraphs 84, 85 and 86 of your report other than  
7 Mr. Berliner's work?

8 MR. KAPLAN: Objection to the form of  
9 the question.

10 A. Again, I know that at the time period in  
11 question here the company was way under-performing.  
12 I know that the billing system in the subsidiaries  
13 wasn't working; that there's identification that  
14 the receivables are extended.

15 I know that there are a whole lot of  
16 problems going on. And to the extent that those  
17 problems are brought forward to a bank group -- and  
18 having been a lender, I can tell you when companies  
19 are getting into trouble, there are often  
20 conversations that happen.

21 And whether or not you're even in a  
22 technical event of default or technical breach of  
23 covenant, if you know that covenant is going to be  
24 breached shortly and you've got the money and not  
25 out the door, it's going to create a conversation.

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1 - PAUL A. MARCUS -

2 analysis that the company might have done that it  
3 actually did do in '03 in determining the effect of  
4 the accurate reporting of information on the  
5 company's position in '02?

6 MR. KAPLAN: Objection to the form.

7 A. Can you repeat the question, please?

8 (The question requested was read back by  
9 the reporter.)

10 MR. KAPLAN: Note my objection to the  
11 form.

12 A. First and foremost, the company did  
13 start a turnaround process and still did go  
14 bankrupt; so we know that's a fact. Now, if they  
15 were to have started some of the major part of that  
16 turnaround program earlier -- and really the two  
17 major ones that were discussed in addition to a lot  
18 of other smaller ones were the suspension of the  
19 dividend and suspension of the preferred stock  
20 payments, the QUIPS payments.

21 Clearly, I believe that if the dividend  
22 would have been cut earlier that would have been an  
23 extremely negative signal to the marketplace. As  
24 mentioned to you, their financial advisors were  
25 telling them only bankrupt utilities cut the

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1 - PAUL A. MARCUS -  
2 dividend to zero, that the equity analysts were  
3 viewing the company on a dividend yield basis which  
4 now, at zero, would make the stock fall  
5 precipitously and all of those would have happened.  
6 So even though they would have tried to  
7 institute many of those things earlier in time, all  
8 it would have done is postpone the bankruptcy  
9 filing itself. But all of the things that  
10 happened, i.e., the equity offering not happening  
11 and the asset transfer not happening, my opinion is  
12 the same.  
13 Q. Why is the timing of the bankruptcy  
14 filing relevant?  
15 A. The extent of the turnaround plan would  
16 have had to save over \$80 million, which is 80-plus  
17 million dollars which were the proceeds from the  
18 equity offering. And all else being equal, they  
19 would have had to save that just to still declare  
20 bankruptcy.  
21 Q. I ask again, sir: Why is the bankruptcy  
22 filing and the timing of the bankruptcy filing  
23 relevant? I don't see it in your opinion here, and  
24 I'm curious as to why it's relevant.  
25 A. The relevance is that I've looked at the

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1 - PAUL A. MARCUS -  
2 security holders to protect their investments of  
3 constituents.  
4 A. The bankruptcy filing is the penultimate  
5 demise of the company and knowing that they did all  
6 of these things with all of this false information  
7 out there, they issued the equity. They funded the  
8 280. They funded the 390 in February. They  
9 started the turnaround process a little bit late  
10 maybe, but still started it.  
11 And with all of those things, they  
12 ultimately went bankrupt. So it -- it's part of my  
13 thinking in my analysis and seeing what ultimately  
14 happened, even though they were able to accomplish  
15 all of those things. And that does have an  
16 influence on my opinions as to what would have  
17 happened.  
18 Q. Sir, you're not offering an opinion as  
19 to whether they would have gone bankrupt or not, or  
20 when they would have gone bankrupt, you just  
21 testified to that.  
22 Your opinion is that some confluence of  
23 these events, not including the covenant breach and  
24 failure of inability to fund the \$280 million  
25 facility, that the other things taken together,

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1 - PAUL A. MARCUS -  
2 time period up to the bankruptcy. To look at the  
3 events that occurred and knowing that the company  
4 couldn't make it and needed to declare bankruptcy  
5 is something that is an indication also of what  
6 would have happened earlier had all of the  
7 information been known.  
8 Q. Well, do you have an opinion as you sit  
9 here today as to when the company would have had to  
10 declare bankruptcy, given the assumptions that  
11 you've made?  
12 A. Not specifically, no.  
13 Q. Okay. I take it you don't have an  
14 opinion as to when the company would have had to  
15 declare bankruptcy, given the assumptions you made,  
16 but also given an assumption the company would have  
17 employed the same turnaround program in early '02  
18 that it actually implemented in early '03, correct?  
19 MR. KAPLAN: Objection to form.  
20 A. I have not come up with an opinion as to  
21 when the company would have declared bankruptcy.  
22 Q. My question then, sir, is, why is the  
23 filing of the bankruptcy and timing of it relevant  
24 in any way relevant to your opinion that the asset  
25 transfer would have been impeded by the attempts of

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1 - PAUL A. MARCUS -  
2 perhaps individually, you haven't done the  
3 analysis, would have impeded the going flat  
4 transaction.  
5 I'm just trying to understand why the  
6 bankruptcy filing or the timing of the bankruptcy  
7 filing is relevant to anything.  
8 MR. KAPLAN: I'm going to object. There  
9 were about three speeches worked in there. You're  
10 trying to characterize the testimony.  
11 You didn't, so I'm going to object to  
12 that question. If there's a question in there, ask  
13 the question, but I think you can skip the long  
14 speeches.  
15 Q. You can answer.  
16 A. Well, you did make a number of  
17 statements that I'm not sure I agree with. That  
18 was pretty long so I don't remember all of them.  
19 Q. I'll just take the last part of it.  
20 Why is the bankruptcy filing or the  
21 timing of the bankruptcy filing relevant to  
22 anything in your opinion?  
23 MR. KAPLAN: Objection. Asked and  
24 answered multiple times.  
25 A. And again, in my overall analysis of the

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1 - PAUL A. MARCUS -  
 2 company and what actually happened to the company,  
 3 it is part of the analysis that I did to know what  
 4 ultimately happened to the company.  
 5 Q. Okay. You're not offering an opinion  
 6 that the bankruptcy of the company would have  
 7 impeded the going flat transaction are you?  
 8 MR. KAPLAN: Objection to the form.  
 9 A. Can you repeat the question?  
 10 (The question requested was read back by  
 11 the reporter.)  
 12 MR. KAPLAN: Are you asking whether a  
 13 bankruptcy filing before the going flat  
 14 transaction --  
 15 MR. PIZZURRO: The witness has testified  
 16 he has no idea under the scenario he assumed when  
 17 it occurred or the assumed scenarios. I'm not  
 18 putting that into my question. I'll stand on my  
 19 question.  
 20 MR. KAPLAN: If you can understand.  
 21 A. First of all, I haven't said I  
 22 determined when it would have happened as opposed  
 23 to I don't have any idea. It actually isn't  
 24 something that I've done that's in response to your  
 25 statement.

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1 - PAUL A. MARCUS -  
 2 Northwestern made?  
 3 MR. KAPLAN: Objection to the form. Are  
 4 you asking any specific filings?  
 5 Q. Any. Did you review the Petition?  
 6 A. I don't specifically recall.  
 7 Q. Did you review the Disclosure Statement?  
 8 A. I don't recall that.  
 9 Q. Did you review the Plan?  
 10 A. I don't recall.  
 11 Q. What caused the company to go bankrupt?  
 12 MR. KAPLAN: Objection to the form.  
 13 A. As I said, I haven't seen -- I don't  
 14 recall seeing the documents, so I might have known  
 15 that at one point. I just don't know it now.  
 16 Q. You don't know?  
 17 A. I don't know right now.  
 18 Q. Sir, let me direct your attention to  
 19 Page 43 of the report.  
 20 Starting with Paragraph 108 and going on  
 21 to Paragraph 117, do you see that, sir, under the  
 22 heading -- under "S390 Million CSFB Financing"?  
 23 A. I do.  
 24 MR. KAPLAN: If you need to read the  
 25 paragraph, you should.

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1 - PAUL A. MARCUS -  
 2 However, the -- knowing that the company  
 3 with all of the information that ultimately came  
 4 out about the business caused the company to go  
 5 bankrupt is relevant in the sense that as you're  
 6 looking at what the market was doing prior to those  
 7 two events and how the market was interpreting it  
 8 to the extent that they could have forecasted or  
 9 known that the company was in dire straights, it  
 10 would be additional information that I would have  
 11 analyzed in coming up with my opinions.  
 12 Q. How did you use it in coming up with  
 13 your opinions?  
 14 MR. KAPLAN: Objection to the form.  
 15 A. I'm trying to think of a different way  
 16 to say it than I already have.  
 17 The way-- in analyzing the company and  
 18 its prospects, as well as what actually happened to  
 19 the company, it is a fact that I used in assessing  
 20 the events that would have occurred had the  
 21 misrepresented and omitted information been  
 22 released to the public.  
 23 I'm not sure there's a better way to  
 24 explain it to you.  
 25 Q. Did you review the bankruptcy filings

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1 - PAUL A. MARCUS -  
 2 Q. Please. If you want to review it,  
 3 that's fine. I have no problem.  
 4 A. Why don't you ask your question and then  
 5 I'll review what I need to, if that's necessary.  
 6 Q. Is it your view, as expressed in those  
 7 paragraphs, that Northwestern would have found it  
 8 difficult -- strike that.  
 9 If we assume there was no covenant  
 10 breach and failure to fund the \$280 million  
 11 revolver, does that have any effect on the analysis  
 12 that you've done in these paragraphs?  
 13 MR. KAPLAN: Objection to the form.  
 14 A. Can you repeat the question?  
 15 (The question requested was read back by  
 16 the reporter.)  
 17 A. There might be a small effect. But as  
 18 I'm reading through it quickly here, I don't think  
 19 there would be -- would be much.  
 20 Q. What would the small effect be?  
 21 A. Probably depend on the timing, but if  
 22 the loan was fully funded, assuming that happened,  
 23 hypothetically, and the same group of people were  
 24 offered an opportunity to switch to first mortgage  
 25 security bonds versus the unsecured position they

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1 - PAUL A. MARCUS -  
2 doing that kind of analysis. I wanted to  
3 characterize it that I was uncomfortable with the  
4 information -- or lack thereof information to do  
5 that analysis. And I don't remember -- recall any  
6 specific conversation with them about not  
7 performing it.  
8 Q. Do you recall anything generally  
9 discussing with them the fact that you weren't --  
10 that you didn't have enough information to perform  
11 it?  
12 A. I don't recall that I did, no.  
13 Q. Did you discuss that fact with any of  
14 your colleagues at Huron?  
15 A. Yes.  
16 Q. Who did you discuss it with?  
17 A. Most likely Dana Hayes.  
18 Q. Do you know whether Dana Hayes discussed  
19 your concern that you didn't have enough  
20 information to do that analysis with any of the  
21 lawyers at Fried, Frank?  
22 A. Not to my knowledge, no.  
23 Q. Why did you discuss this with Dana  
24 Hayes?  
25 A. She was one of the people who was

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1 - PAUL A. MARCUS -  
2 Q. No idea?  
3 A. None.  
4 MR. PIZZURRO: Let's take a five-minute  
5 break. I might be done.  
6 (Whereupon, there was a brief recess in  
7 the proceedings.)  
8 MR. PIZZURRO: I have no further  
9 questions.  
10  
11 EXAMINATION BY MR. KALECZYC:  
12 Q. Mr. Marcus, my name is Stan Kaleczyc,  
13 and I'm one of the attorneys who represents Michael  
14 Hanson and Ernie Kindt in the lawsuit Northwestern  
15 versus Hanson and Kindt.  
16 At the time prior to the filing of your  
17 expert report, were you told that the expert report  
18 was also to be used in connection with the case  
19 Northwestern versus Hanson and Kindt?  
20 A. I was not, no.  
21 Q. Did you have a general understanding  
22 that it would be used in that lawsuit?  
23 A. I did not, no.  
24 Q. As we sit here today, do you anticipate  
25 being called as an expert witness in connection

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1 - PAUL A. MARCUS -  
2 working on the case with me. We were analyzing it  
3 She was in charge of executing my requests for  
4 information, and she was involved in crunching some  
5 of the numbers, so to speak, and that as we found  
6 out there was an accounting expert that was doing  
7 that, I diverted our attention to doing the other  
8 analyses that we did. And we didn't continue to  
9 push for information since it was already being  
10 done.  
11 Q. Did you consider that the analysis was  
12 crucial to the opinion that you were rendering?  
13 A. As we talked at great lengths this  
14 morning, it's not crucial to the opinion that I'm  
15 rendering.  
16 It all relates to whether or not the 280  
17 got funded or not, and it's a component of the  
18 analysis where I used Mr. Berliner's numbers that  
19 supported a position I already had; so it wasn't  
20 critical. I don't agree with your  
21 characterization; "crucial," I think you said.  
22 Q. Do you know how much the plaintiffs have  
23 paid to have Mr. Berliner's analysis done?  
24 MR. KAPLAN: Objection.  
25 A. No idea.

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1 - PAUL A. MARCUS -  
2 with the Northwestern versus Hanson lawsuit?  
3 MR. KAPLAN: Objection.  
4 A. I don't know what I'm going to be called  
5 for past this meeting, so no.  
6 Q. Before you filed the ex -- your expert  
7 report in this case, had you reviewed the Complaint  
8 in the lawsuit Northwestern versus Hanson and  
9 Kindt?  
10 A. I had not.  
11 Q. Do you have any general understanding of  
12 the allegations in the lawsuit against  
13 Messrs. Hanson and Kindt?  
14 A. I do not.  
15 Q. At any time prior to the completion of  
16 your expert report, did you ever discuss the Hanson  
17 and Kindt litigation with Miss Steingart or any of  
18 the other lawyers from Fried, Frank?  
19 A. I don't recall doing so, no.  
20 Q. Did you ever discuss -- did you ever  
21 discuss the Hanson and Kindt matter in any way with  
22 any of your associates at Huron?  
23 A. Not that I recall, no.  
24 Q. In preparation of your expert report,  
25 did you review the deposition of Ernie Kindt?

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1 - PAUL A. MARCUS -  
 2 was with Northwestern Corporation or any of its  
 3 subsidiaries between the time February 2002 and  
 4 November 2002?  
 5 A. I believe I did know that. I don't  
 6 recall that as I'm sitting here today.  
 7 Q. Do you remember generally what his job  
 8 responsibilities were?  
 9 A. No, I generally don't remember.  
 10 Q. Who would have told you what Mr. Kindt's  
 11 responsibilities were, if you did not read his  
 12 deposition?  
 13 MR. KAPLAN: Objection to the form.  
 14 A. Again, I don't recall where I have that  
 15 knowledge, so it would have either been the person  
 16 who reviewed the deposition or to the extent it was  
 17 in another document that talked about positions  
 18 within the company. I just don't remember.  
 19 Q. What is your understanding of  
 20 Mr. Hanson's position with Northwestern Corporation  
 21 or any of its subsidiaries during that time period,  
 22 February through November of 2002?  
 23 A. My recollection is that he was the CEO  
 24 of Expanets, but I don't have it in front of me.  
 25 There are a lot of names, but I think that was his

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1 - PAUL A. MARCUS -  
 2 Mr. Kindt had any responsibility for the failure to  
 3 disclose information during the year 2002 that you  
 4 discussed in your expert report?  
 5 MR. KAPLAN: Objection.  
 6 A. The opinions that I stated are set forth  
 7 in my report. I would have incorporated a whole  
 8 host of information in that to the extent he's  
 9 specifically identified in the report; that would  
 10 be evidence of a specific connection, but that's  
 11 not to say that there wouldn't be some others. But  
 12 I haven't put forth a separate opinion on  
 13 Mr. Kindt.  
 14 Q. Were you asked to render any opinion  
 15 with respect to Mr. Kindt and whether he had any  
 16 responsibility for the disclosures or failure to  
 17 disclose information in 2002?  
 18 A. No, I was not.  
 19 Q. Just so that the record is clear,  
 20 Mr. Marcus, to the extent that you do have an  
 21 opinion concerning Mr. Kindt's responsibility, it  
 22 would be contained in the expert report?  
 23 A. I would have identified -- if there's a  
 24 specific identification of him in the report, then  
 25 that would signify that there was some particular

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1 - PAUL A. MARCUS -  
 2 position.  
 3 Q. Do you know if he held any other  
 4 positions?  
 5 A. I'm sure I knew what his positions were  
 6 prior to writing the report. I just don't recall  
 7 specifically as I'm sitting here what they were.  
 8 Q. To the best of your recollection sitting  
 9 here today, your recollection is that he was the  
 10 CEO of Expanets?  
 11 A. I think that was his title, though,  
 12 again, it was confusing because there were  
 13 overlapping people and overlapping time periods and  
 14 overlapping titles. So I knew all of those prior  
 15 to the deposition. I didn't refresh my memory on  
 16 everyone's exact title prior to today.  
 17 Q. Do you recall whether Mr. Hanson had any  
 18 involvement with the management of subsidiary Blue  
 19 Dot?  
 20 A. I don't recall.  
 21 Q. Do you know whether Mr. Hanson had any  
 22 responsibilities with respect to the utility  
 23 business of Northwestern Corporation?  
 24 A. I don't recall that either.  
 25 Q. Do you have any opinion as to whether

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1 - PAUL A. MARCUS -  
 2 piece of evidence that I was tying to the report in  
 3 supporting one of the positions in the report.  
 4 There might be some other things that didn't make  
 5 it to the report that might or might not support  
 6 that position. I don't recall them all.  
 7 Q. Well, is it your testimony, Mr. Marcus,  
 8 that just because an individual's name appears in  
 9 the report, that that person had responsibility for  
 10 the failure to disclose information that you  
 11 believe should have been disclosed in 2002?  
 12 MR. KAPLAN: Objection to the form.  
 13 A. I don't think that that was what I was  
 14 trying to say. What I suggested was that if the  
 15 person was identified in the report, that it was my  
 16 belief that that information was supporting the  
 17 positions and the opinions that I was making in my  
 18 report. That's all I said.  
 19 Q. I think you've told me just a moment ago  
 20 that there was other information that may not have  
 21 been -- may not have made its way into the report  
 22 is that correct?  
 23 A. I believe I said that in an earlier part  
 24 of the deposition, as well. There are lots and  
 25 lots of pieces of information that I reviewed.

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1 - PAUL A. MARCUS -  
2 Q. Can you, sitting here today, think of  
3 any examples of any information related to  
4 Mr. Kindt that did not make its way into the  
5 report?  
6 A. None that I can recall, no.  
7 Q. You never specifically analyzed whether  
8 Mr. Kindt was responsible in any way for the  
9 failure to make disclosures that you criticize in  
10 your report?  
11 A. That's correct.  
12 Q. Let's talk for a few minutes, then,  
13 about Mr. Hanson.  
14 Were you ever requested to render an  
15 opinion as to whether Mr. Hanson specifically was  
16 responsible for the failure to make any  
17 disclosures?  
18 A. I was not, no.  
19 Can we go off the record?  
20 Q. Absolutely.  
21 (Whereupon, a brief discussion was held  
22 off record.)  
23 Q. In your expert report -- in the  
24 preparation of your expert report, did you consider  
25 whether Mr. Hanson had any responsibility for

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1 - PAUL A. MARCUS -  
2 report, do you recall anything in Mr. Berliner's  
3 report that indicated that Mr. Hanson was in any  
4 way responsible for the failure to make disclosures  
5 in 2002?  
6 A. Again, based on my very preliminary  
7 review of it, I don't recall any, no.  
8 Q. And the same question with respect to  
9 Mr. Kindt in your review of the Berliner report?  
10 A. And my answer would be the same.  
11 Q. If you would turn to Pages 5 and 6 of  
12 your report, please, Mr. Marcus.  
13 A. Okay.  
14 Q. With respect to your first opinion --  
15 and actually, it's on Page 6 in the paragraph that  
16 begins, "In each case above." It's after the  
17 bullet points.  
18 A. I see that, yes.  
19 Q. In the first sentence reads, "In each  
20 case above, material information, much of which was  
21 the focal point of analyses being performed by  
22 security analysts, rating agencies and investors,  
23 was known and withheld from the marketplace by the  
24 management of Northwestern."  
25 When you say "management of

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1 - PAUL A. MARCUS -  
2 failure to make the disclosures that you criticize  
3 in the report?  
4 A. Again, only to the extent that he would  
5 have been identified as participating in something  
6 where -- which I felt was indicative of there being  
7 misleading information in the marketplace, and that  
8 would have been identified in the report.  
9 Q. Could you point out for me any places in  
10 your expert report where you identified Mr. Hanson  
11 as participating in something which you felt were  
12 indicative of there being misleading information?  
13 A. I don't believe there's any specific  
14 reference to Mr. Hanson in the report.  
15 Q. Although there is no specific references  
16 in the report, Mr. Marcus, did you specifically  
17 analyze whether Mr. Hanson was in any way  
18 responsible for the failure to disclose certain  
19 information during 2002?  
20 A. I did not, no.  
21 Q. You reviewed Mr. Berliner's report prior  
22 to the finalization of your expert report, correct?  
23 A. "Review" would be a strong word. I  
24 skimmed through it.  
25 Q. In skimming through Mr. Berliner's

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1 - PAUL A. MARCUS -  
2 Northwestern," specifically to which individuals  
3 are you referring?  
4 A. In this case, it's a general  
5 characterization. I did not analyze each  
6 individual manager's contribution to the  
7 information that was not in the marketplace.  
8 Q. Did you analyze the contribution of any  
9 of the individual managers of Northwestern?  
10 A. Analyzing individual contributions would  
11 be too strong of a statement. I did review  
12 declarations made by different managers. I  
13 reviewed the Cease and Desist Order from the SEC  
14 and their accusations regarding management.  
15 So I generally reviewed those things and  
16 there were different pieces of information I relied  
17 on. But I did not undertake a separate analysis of  
18 each individual manager's contribution to those  
19 misrepresentations.  
20 Q. Well, would it be fair to say, then,  
21 that you have no opinion as to any specific manager  
22 at Northwestern as to whether that person has any  
23 responsibility for the failure to make disclosures?  
24 A. It's fair to say that I haven't analyzed  
25 that.

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1 - PAUL A. MARCUS -

2 Mr. Marcus, you talk about comments of rating  
3 agencies at various periods of time.

4 Do you believe that the comments made by  
5 the rating agencies were accurate based upon the  
6 information that they then had available to them at  
7 any particular time period?

8 MR. KAPLAN: Objection to the form.

9 A. I'm not sure I can opine on their  
10 accuracy.

11 Q. Well, let me rephrase the question.

12 Do you have any reason to believe that  
13 the rating agencies -- strike that.

14 You rely upon various statements from  
15 the rating agencies in your expert report, don't  
16 you?

17 A. Again, I use the rating agency coverage  
18 of the company as part of the analysis that I  
19 performed in coming up with my conclusions.

20 Q. Why did you rely upon the rating  
21 agencies' statements as part, in coming up with  
22 your conclusions?

23 MR. KAPLAN: Objection to the form.

24 A. They were one of the areas -- "they"  
25 being the rating agencies, that rated the bonds

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1 - PAUL A. MARCUS -

2 which would have had an effect on how the company  
3 would have been able to issue debt and how the  
4 company Northwestern was viewed by the debt  
5 holders. So I used that information in coming up  
6 with my opinions to help assess those particular  
7 characteristics within the debt markets.

8 Q. The rating agencies would have relied  
9 upon publicly available information that -- at the  
10 particular time they made their comments?

11 MR. KAPLAN: Objection to the form.

12 A. I don't know that to be a fact or not.  
13 They could be given information that I don't know  
14 about that isn't public, so --

15 Q. Have you ever been employed by a rating  
16 agency?

17 A. I have not, no.

18 Q. In your career, you've worked with  
19 rating agencies in various capacities and in your  
20 work representing lenders, for example?

21 A. I've had to analyze the reports of  
22 credit rating agencies numerous times, yes.

23 Q. In that context, have you ever known  
24 rating agencies to be relying upon information that  
25 was not part of the public domain?

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1 - PAUL A. MARCUS -

2 A. It's a bit of a chicken and the egg.  
3 Once they put out a report, then the information is  
4 in the public domain. I don't know if they had  
5 inside conversations with management prior to  
6 issuing their report that might have been private;  
7 I just can't answer that.

8 Q. Earlier, Mr. Marcus, I had asked you  
9 about the definition of who was management,  
10 specifically with respect to your opinion on Page 6  
11 of your report. There are other places in the  
12 report where you also refer to company management.

13 Would your answer be the same in each of  
14 those cases, that it's a general statement rather  
15 than a specific reference to individuals?

16 A. That's correct; it would.

17 Q. In the preparation of your expert  
18 report, did you ever review the public disclosure  
19 documents issued by the Montana Power Company at  
20 the time that it sold the QUIPS to the public in  
21 1996?

22 A. I did not, no.

23 Q. I believe you did testify earlier that  
24 you did review the indenture and amendments to the  
25 indenture associated with the QUIPS?

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1 - PAUL A. MARCUS -

2 A. I believe I testified that I read it  
3 quickly. I reviewed would probably be stronger  
4 than I actually -- than I did.

5 Q. If you would turn to Page 7 of your  
6 report, Mr. Marcus, in your opinion that's II.

7 You state, "Had the assets of  
8 Northwestern Energy LLC not been transferred to  
9 Northwestern, the QUIPS' investors would have been  
10 covered by the former's assets and not junior to  
11 the debt and other liabilities of Northwestern  
12 Corp."

13 What do you mean by "covered by the  
14 former's assets"?

15 A. I refer you to later in my report where  
16 I describe it, but generally it's the structural  
17 subordination that we were talking about. So if  
18 Northwestern LLC is a separate entity, and looking  
19 at the assets and the liabilities of that entity  
20 there was positive net worth, as I described later  
21 in the report, whereas when they went to -- when  
22 those assets were transferred to Northwestern that  
23 flipped and by the end of 2002 there was no  
24 coverage for the securities that were at the bottom  
25 of the pile which, in this case, were the QUIPS.

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1 - PAUL A. MARCUS -

2 constituents of the Montana Public Service  
3 Commission?

4 A. It would include the rate payers within  
5 their jurisdiction, the major one.

6 Q. Any others?

7 A. There may be some others. I can't think  
8 of any at this point.

9 Q. Also this morning you talked about other  
10 interested parties who might have a concern, in  
11 addition to the Montana Public Service Commission,  
12 with the Northwestern Corporation transactions and  
13 specifically you mentioned the Montana Attorney  
14 General.

15 What is the basis of your opinion that  
16 the Montana Attorney General may have had an  
17 interest in what was happening at Northwestern  
18 during the 2002 time period?

19 MR. KAPLAN: Objection to the form.

20 A. My general recollection of that question  
21 was: Are there any other potential people than  
22 Attorney Generals in all states if they feel the  
23 consumers in those states are suffering, have the  
24 ability to step in. That was the total extent of  
25 what I was trying to say.

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1 - PAUL A. MARCUS -

2 Q. Have you specifically reviewed any  
3 Montana statutes that might describe the  
4 jurisdiction of the Montana Attorney General to  
5 step in, in a case like this?

6 A. I have not, no.

7 Q. Have you reviewed the provisions of the  
8 Montana Constitution that relate to the office of  
9 the Attorney General?

10 A. I have not, no.

11 Q. So your statement then was really just  
12 based upon speculation as to what the Montana  
13 statutes might be?

14 MR. KAPLAN: Objection to the form.

15 A. Well, the statement was based on the  
16 fact that Attorney Generals across the country step  
17 into situations where they believe people are at  
18 risk, or companies are at risk or disclosures  
19 aren't made and it was a general question that was  
20 asked, and it's a possibility. That's what it's  
21 based on.

22 Q. Any other state governmental authorities  
23 in Montana that you believe may have stepped in?

24 MR. KAPLAN: Objection to the form.

25 A. None that I can think of sitting here

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1 - PAUL A. MARCUS -

2 today.

3 Q. Either in preparation of your expert  
4 report or in preparation for your deposition today,  
5 did you ever review the joint applications  
6 submitted by the sellers and Northwestern  
7 Corporation for the acquisition of Montana Power  
8 LLC? That's the joint application to the Montana  
9 Public Service Commission.

10 A. I don't recall that.

11 Q. I didn't see it listed in the exhibit to  
12 your expert report.

13 A. Then I don't believe I would have.

14 Q. Did you review the transcript of the  
15 proceedings related to the joint application for  
16 the acquisition of Montana Power LLC by  
17 Northwestern?

18 A. I don't believe I did.

19 Q. This afternoon in response to a question  
20 from Mr. Pizzurro you stated that the Montana  
21 Public Service Commission could have ring fenced  
22 the Montana utility assets; is that correct?

23 A. I think I used the term that someone  
24 else had used in the sense that he asked what they  
25 could have done, and it was a description of their

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1 - PAUL A. MARCUS -

2 ability to regulate the flow of money in and out of  
3 the company.

4 Q. In that answer, you did use the phrase  
5 "ring fencing"; is that correct?

6 A. I recall using that term.

7 Q. What is your understanding of the term  
8 "ring fencing"?

9 A. Again, I think it has broad uses in the  
10 context of how I was using it. It was just as I  
11 just described, which is that they could prohibit  
12 funds from leaving the entity that was housed in  
13 their state to go to other things like unregulated  
14 subsidiaries or things of that nature.

15 Q. Do you know whether the Montana Public  
16 Service Commission has the statutory authority to  
17 require ring fencing?

18 MR. KAPLAN: Objection. Calls for a  
19 legal conclusion.

20 Q. I'm asking for your understanding of  
21 Montana statutes.

22 MR. KAPLAN: That calls for a legal  
23 conclusion.

24 A. I don't understand the Montana statutes,  
25 per se. What I do understand is that regulatory

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1 - PAUL A. MARCUS -  
 2 bodies have an ability to protect their  
 3 constituencies, as I said earlier, and oftentimes  
 4 they do things like prohibit funds from flowing out  
 5 of the companies to protect them.  
 6 Q. But with respect to the State of  
 7 Montana, in particular, you don't have any  
 8 knowledge as to whether ring fencing is a  
 9 permissible activity of the regulatory bodies,  
 10 correct?  
 11 MR. KAPLAN: Objection to the form.  
 12 Calls for a legal conclusion.  
 13 A. I don't have a legal opinion as to  
 14 whether or not you could do that or not.  
 15 Q. You have no opinion, legal or otherwise,  
 16 specifically with respect to Montana; is that fair?  
 17 A. Respect to what?  
 18 Q. Montana authority or the ability of the  
 19 Montana Public Service Commission to ring fence.  
 20 MR. KAPLAN: Objection. Asked and  
 21 answered, and calls for a legal conclusion.  
 22 A. Can you ask your question again? I'm  
 23 sorry.  
 24 Q. Let's just move on.  
 25 A. Sorry.

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1 - PAUL A. MARCUS -  
 2 Q. Do you know what utilities operate in  
 3 Montana, regulated utilities?  
 4 A. Sitting here today, no.  
 5 Q. This morning I think you had testified,  
 6 if I took my note correctly, that you had reviewed  
 7 certain procedural pronouncements of the Montana  
 8 Public Service Commission.  
 9 Do you recall that testimony?  
 10 A. If by the "procedural pronouncements"  
 11 you're talking about the final order to the  
 12 dissenting order on the \$390 million bond offering,  
 13 I did review that.  
 14 Q. That would have been the order that came  
 15 out in the early part of 2003?  
 16 A. I believe that was the time frame.  
 17 Q. And that's the same order in which you  
 18 quote from the dissenting opinion of Commissioner  
 19 Brainard, B-R-A-I-N-A-R-D; is that correct?  
 20 A. That would be correct.  
 21 Q. Other than that one particular order,  
 22 did you review any other orders of the Montana  
 23 Public Service Commission?  
 24 A. I believe there were other things. I  
 25 just don't recall what they were specifically.

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1 - PAUL A. MARCUS -  
 2 Q. I think I know that you don't know.  
 3 MR. KAPLAN: Objection to the extra  
 4 commentary.  
 5 Q. Withdrawn.  
 6 Mr. Marcus, have you ever advised a  
 7 client on financing matters involving a company  
 8 regulated by the Montana Public Service Commission?  
 9 A. I might have. I just don't recall.  
 10 Q. In what capacity might you have done  
 11 that?  
 12 A. Most specifically, it would have been at  
 13 the time when I was a lender at Bank of America.  
 14 We lent money to companies in the utility industry.  
 15 I was doing that out of their Chicago  
 16 office so I was covering utilities all throughout  
 17 the midwest. Montana was not specifically a state  
 18 that was covered in our geographical area, although  
 19 I'm just not sure I remember whether or not some of  
 20 the utilities that I was working with would have  
 21 had some holding in Montana that would have caused  
 22 Montana to regulate them.  
 23 Q. But nothing that stands out in your mind  
 24 sitting here today?  
 25 A. That's correct.

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1 - PAUL A. MARCUS -  
 2 Q. Would they be reflected in the exhibit  
 3 that's attached to your expert report?  
 4 A. They should be.  
 5 Q. If you could turn to the exhibit then,  
 6 just identify which other Public Service Commission  
 7 orders you may have relied upon.  
 8 MR. KAPLAN: I object to making the  
 9 witness go through a long list of many documents  
 10 and testing his memory and ability to find the  
 11 document on these long lists.  
 12 A. I'm not sure I could do that sitting  
 13 here today. Some of this stuff is identified by a  
 14 name and Bates number, but it could have an order  
 15 within it. I just -- I'm not trying to not answer  
 16 the question. I just can't answer it based on this  
 17 list.  
 18 Q. Other than the order which you have  
 19 already identified and testified to, do you recall  
 20 relying upon any other orders of the Public Service  
 21 Commission in Montana for purposes of opinions you  
 22 formulate in your expert report?  
 23 A. To the extent that I read other  
 24 opinions, they would have been included. I think  
 25 my thinking of how the Commission would react in

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1 - PAUL A. MARCUS -

2 certain situations and my recollection is that I  
3 saw some other things from earlier in the time  
4 period from the Commission. I just can't identify  
5 them sitting here.

6 Q. Would they have been other things  
7 related to the docket whose subject was the  
8 acquisition of Montana Power LLC by Northwest?

9 A. That would be my general understanding,  
10 yes.

11 Q. Do you have any recollection of looking  
12 at any orders of the Montana Public Service  
13 Commission dealing with dockets involving regulated  
14 utilities other than Northwestern Corporation?

15 A. I did not, no.

16 Q. How did you locate those other orders?  
17 Did you find them or your staff find them or were  
18 they given to you?

19 A. My staff provided them to me. I don't  
20 know if they independently found those or they  
21 requested them from counsel. I just don't know the  
22 answer to that.

23 Q. Are there any opinions or orders of the  
24 Public Service Commission on which you relied that  
25 are not referenced somewhere in your expert report

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2 A. Again, to the extent that I reviewed  
3 other documents relating to the Commission's  
4 attitude and feelings towards this company, they  
5 would have been included in my thinking when I came  
6 up with my opinions. I don't think they're  
7 referenced in the report, but they would have  
8 been -- they would have been something that would  
9 have given me a certain impression of what the  
10 company relationship with the Commission was and  
11 how the Commission might respond in a situation  
12 where all of a sudden the financial prospects of  
13 the company change dramatically.

14 Q. Why would you not have referenced those  
15 in your report?

16 A. I'm not saying it's not referenced in  
17 the document list. What I'm suggesting is there  
18 was one particular quote which I used in my report  
19 which you're calling a reference. I'm telling you  
20 the collective report describes what my belief is  
21 from my review of all this information.

22 Q. So that it's clear to me, Mr. Marcus,  
23 are all the documents you reviewed listed in  
24 Exhibit I to your report?

25 MR. KAPLAN: Objection to the form.

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2 A. It's always my sincere hope that all of  
3 them do make it to this list. There could be an  
4 exception, and I just don't know.

5 Q. So other than as a result of perhaps  
6 inadvertence, everything you looked at is  
7 referenced in Exhibit I?

8 A. That's my sincere desire to make that  
9 happen.

10 Q. Just so that the record is clear, you  
11 have no understanding as to what the allegations  
12 against Messrs. Hanson and Kindt are that are made  
13 in the Complaint by Magten against them?

14 MR. KAPLAN: Objection. Asked and  
15 answered.

16 A. That's correct.

17 MR. KALECZYC: Let's take a few minute  
18 break.

19 (Whereupon, there was a brief recess in  
20 the proceedings.)

21 Q. Mr. Marcus, would you turn to Page 7 of  
22 your report, again, please.

23 A. Okay.

24 Q. In III, the third opinion, the  
25 assumption is that Clark Fork remained liable for

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2 the QUIPS obligations.

3 Is that your assumption, or did someone  
4 direct you to make that assumption?

5 MR. KAPLAN: Objection to the form.

6 A. That was an assumption I was asked to  
7 make.

8 Q. Who asked you to make that assumption?

9 A. That assumption would have been asked by  
10 counsel. I was asked to make that assumption by  
11 counsel.

12 Q. Independent of the assumption that  
13 counsel asked you to make, do you have any opinion  
14 as to whether Clark Fork remained liable for the  
15 QUIPS obligations?

16 MR. KAPLAN: Objection.

17 A. As a matter of a legal conclusion, I  
18 don't.

19 Q. Any opinion?

20 MR. KAPLAN: Objection. Calls for a  
21 legal conclusion. Goes to the underlying issue in  
22 the litigation.

23 A. I guess I can only tell you what I have,  
24 and I've made this assumption based on what I was  
25 asked to do by counsel.

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<p>1 - PAUL A. MARCUS -</p> <p>2 questions.</p> <p>3</p> <p>4 EXAMINATION BY MR. KAPLAN:</p> <p>5 Q. Mr. Marcus, if you could pull out your</p> <p>6 report marked as Exhibit 3. I'd like you to turn</p> <p>7 to Page 47 and look at Paragraph 121.</p> <p>8 Does that paragraph refresh your</p> <p>9 recollection as to Mr. Hanson's role at</p> <p>10 Northwestern subsidiaries during 2002?</p> <p>11 A. It does; he was president and CEO.</p> <p>12 Q. And if you look at Page 49,</p> <p>13 Paragraph 125.</p> <p>14 A. Okay.</p> <p>15 Q. I think you testified earlier in</p> <p>16 response to a question that you didn't think</p> <p>17 Mr. Hanson was mentioned in the report. I just</p> <p>18 wanted to know whether you wanted to correct that</p> <p>19 answer.</p> <p>20 A. He is indicated in the report.</p> <p>21 MR. KAPLAN: I have nothing further.</p> <p>22 MR. PIZZURRO: I have a couple of</p> <p>23 questions.</p> <p>24</p> <p>25 EXAMINATION BY MR. PIZZURRO:</p> <p>197</p>	<p>1 - PAUL A. MARCUS -</p> <p>2 Q. Direct your attention to Paragraph 121,</p> <p>3 Page 47 of the report, which your counsel just</p> <p>4 questioned you on, Mr. Marcus.</p> <p>5 A. Yes, sir.</p> <p>6 Q. And it refers to the officers'</p> <p>7 certificates executed in connection with the</p> <p>8 transfer of the assets.</p> <p>9 Do you see that?</p> <p>10 A. I do see that.</p> <p>11 Q. Did you review the officers' certificate</p> <p>12 referred to in Paragraph 121?</p> <p>13 MR. KAPLAN: Objection. I object. This</p> <p>14 is well beyond the scope of my recross. It's just</p> <p>15 one question to refresh his recollection. It</p> <p>16 doesn't open up the whole topic.</p> <p>17 MR. PIZZURRO: Are you directing him not</p> <p>18 to answer?</p> <p>19 MR. KAPLAN: I direct --</p> <p>20 MR. PIZZURRO: We're at deposition, not</p> <p>21 trial.</p> <p>22 MR. KAPLAN: I understand. It's still</p> <p>23 well beyond --</p> <p>24 MR. PIZZURRO: That's fine. Objection</p> <p>25 noted.</p> <p>198</p>
<p>1 - PAUL A. MARCUS -</p> <p>2 Q. You can answer the question.</p> <p>3 MR. KAPLAN: You can.</p> <p>4 A. My recollection is it was one of the</p> <p>5 exhibits of the deposition, and I would have seen</p> <p>6 it.</p> <p>7 Q. As you sit here today, can you recall</p> <p>8 what it said?</p> <p>9 A. Sitting here today, I can't recall</p> <p>10 exactly what it said.</p> <p>11 Q. Do you have any understanding, sitting</p> <p>12 here today, whether there was any false or</p> <p>13 misleading statement made in the officers'</p> <p>14 certificate referenced in Paragraph 121?</p> <p>15 MR. KAPLAN: I'm going to object. I'll</p> <p>16 let him answer this question and then not let him</p> <p>17 answer any more. This is well beyond the scope.</p> <p>18 I'm not going to let him keep going.</p> <p>19 A. Can you repeat the question? I'm sorry</p> <p>20 (The question requested was read back by</p> <p>21 the reporter.)</p> <p>22 A. Sitting here today, I don't recall that.</p> <p>23 MR. PIZZURRO: No questions. No further</p> <p>24 questions.</p> <p>25 MR. KALECZYC: Mr. Marcus, a few</p> <p>199</p>	<p>1 - PAUL A. MARCUS -</p> <p>2 follow-ups.</p> <p>3</p> <p>4 EXAMINATION BY MR. KALECZYC:</p> <p>5 Q. When Mr. Kaplan directed you to</p> <p>6 Paragraph 121 with respect to Mr. Hanson's position</p> <p>7 as president and CEO, Northwestern Energy, was</p> <p>8 Mr. Hanson, to the best of your recollection during</p> <p>9 that same time period in 2002, also the -- an</p> <p>10 officer of Expanets as you previously testified?</p> <p>11 A. I'd have to go back. Sitting here now,</p> <p>12 I'm confused as to which positions he held within</p> <p>13 the company. I'd have to go back and look at the</p> <p>14 information I relied on when I put the report</p> <p>15 together.</p> <p>16 Q. Having been referred to Paragraph 121 by</p> <p>17 Mr. Kaplan, does that in any way change any of your</p> <p>18 answers to the questions that I put to you during</p> <p>19 the deposition concerning Mr. Hanson's</p> <p>20 responsibility, if any, for any false statements or</p> <p>21 misstatements that may have been made by</p> <p>22 Northwestern Corporation that you criticized in</p> <p>23 your report?</p> <p>24 A. I don't believe it changes any of my</p> <p>25 other testimony.</p> <p>200</p>

<p>1 - PAUL A. MARCUS -</p> <p>2 Q. I believe Mr. Kaplan then also referred</p> <p>3 you to Paragraph 125 on Page 49. You quote</p> <p>4 Mr. Hanson's statements there that are indented,</p> <p>5 correct?</p> <p>6 A. That's correct.</p> <p>7 Q. In quoting the statements of Mr. Hanson,</p> <p>8 is it your opinion that the statements that you</p> <p>9 quote him as having made were not true when made?</p> <p>10 MR. KAPLAN: Objection to the form.</p> <p>11 A. I don't believe I've testified one way</p> <p>12 or another whether they were true or not.</p> <p>13 Q. I'm asking you whether you have an</p> <p>14 opinion as to whether you believe the statements</p> <p>15 made by Mr. Hanson were true at the time he made</p> <p>16 them.</p> <p>17 A. I haven't analyzed what went on in</p> <p>18 August of 2001. The statements in the report were</p> <p>19 meant to set the stage for what the -- one of the</p> <p>20 stages of what the regulatory commission would be</p> <p>21 expecting and that was a statement that was made</p> <p>22 but I haven't analyzed whether or not this was a</p> <p>23 truthful statement or not. It's just a statement</p> <p>24 that was made as part of the public regulation at</p> <p>25 the time.</p> <p>201</p>	<p>1 - PAUL A. MARCUS -</p> <p>2 Q. There's nothing contained in that</p> <p>3 statement that would cause you to change any of the</p> <p>4 opinions that you shared with me earlier in this</p> <p>5 deposition concerning Mr. Hanson; is that true?</p> <p>6 A. I believe that's correct, yes.</p> <p>7 MR. KALECZYC: No other questions.</p> <p>8 MR. KAPLAN: Nothing further from me.</p> <p>9 (Whereupon, the deposition concluded at</p> <p>10 3:30 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>202</p>
<p>1 - PAUL A. MARCUS -</p> <p>2 C E R T I F I C A T E</p> <p>3 STATE OF NEW YORK )</p> <p>4 ) ss.</p> <p>5 COUNTY OF NEW YORK )</p> <p>6</p> <p>7 I, HOPE LYNN MENAKER, a Notary Public With n</p> <p>8 and for the State of New York, do hereby certify:</p> <p>9 That PAUL MARCUS, the witness whose deposition</p> <p>10 is hereinbefore set forth, was duly sworn by me and</p> <p>11 that such deposition is a true record of the</p> <p>12 testimony given by the witness.</p> <p>13 I further certify that I am not related to any</p> <p>14 of the parties to this action by blood or marriage,</p> <p>15 and that I am in no way interested in the outcome</p> <p>16 of this matter.</p> <p>17 IN WITNESS WHEREOF, I have hereunto set</p> <p>18 my hand this _____ day of _____, 2007.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 HOPE LYNN MENAKER</p> <p>23</p> <p>24</p> <p>25</p> <p>203</p>	<p>1 - PAUL A. MARCUS -</p> <p>2 A C K N O W L E D G E M E N T</p> <p>3</p> <p>4 STATE OF NEW YORK )</p> <p>5 ) ss.</p> <p>6 COUNTY OF NEW YORK )</p> <p>7</p> <p>8 I, PAUL MARCUS, hereby certify that I have read the</p> <p>9 transcript of my testimony taken under oath in my</p> <p>10 deposition of November 13, 2007; that the</p> <p>11 transcript is a true, complete and correct record</p> <p>12 of my testimony, and that the answers on the record</p> <p>13 as given by me are true and correct.</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 PAUL MARCUS</p> <p>18 Subscribed and sworn</p> <p>19 to before me on this the</p> <p>20 _____ Day of _____, 2007.</p> <p>21 Notary Public, State of New York</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>204</p>

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